

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into this 20th day of October, 2014, by and among Action Outdoor Advertising JV, LLC; KH Outdoor, LLC; and Granite State Outdoor Advertising, Inc. and their principals, members, employees, affiliates, successors, subsidiaries and assignees, and any entity owned or controlled by them (collectively referred to as "Advertisers") and the City of Johns Creek, Georgia ("City"). Collectively these entities are referred to herein as "Parties," and in the singular as a "Party."

WHEREAS, Advertisers filed outdoor advertising sign permit applications with Fulton County, Georgia during 2006 for thirty-one locations which were then in unincorporated Fulton County but which are now in the City as a result of the incorporation of the City on December 1, 2006; and

WHEREAS, litigation (to which all Parties hereto are parties) arose regarding these applications styled Action Outdoor Advertising JV, LLC et al. v. Fulton County, et al. in Fulton County, Georgia Superior Court (Case Nos: 2005CV10977, 2005CV107555, 2005CV109918, 2006CV114781 and 2006CV117063) (hereinafter the "Lawsuit") resulting in an order entered by the Superior Court of Fulton County on May 27, 2010 ruling that Advertisers have a vested right under their applications to build the signs described therein and further ruling that Advertisers' vested rights continue notwithstanding the subsequent creation of the City; and

WHEREAS, the aforesaid order was affirmed by the Supreme Court of Georgia on June 13, 2011 in Case Nos. S11A0023 and S11A0101; and

WHEREAS, certain other disputes have arisen or might arise in the future between the Parties regarding the matters contended in the Lawsuit and because the Parties wish to settle any and all disputes or claims between them in their entirety, they enter into this Agreement.

THEREFORE, in light of the foregoing and based upon the exchange of valuable consideration by and among the Parties to this Agreement – including the Cities' agreement with respect to the signs referenced herein and the waiver of certain legal claims by Advertisers as set forth below – the Parties to this Agreement hereby agree to a mutual release of any and all claims, future or current, arising from or otherwise related to the Lawsuit, as follows:

1.

With respect to the Lawsuit, each of the respective Parties to this Agreement hereby mutually releases and forever discharges each of the other Parties to this Agreement and all of such parties' successors, assigns, agents, affiliates, officers, directors, employees, representatives, insurers, and attorneys from any and all claims, debts, liabilities, demands, obligations, damages, costs, expenses, attorneys fees, actions and causes of action, of every nature, character and description known or unknown, which any of the respective Parties to this Agreement, now own or hold or may have any time heretofore owned or held, or may at any time own or hold against any other Party to this Agreement, excepting enforcing this Agreement.

2.

Subject to the terms hereof, by signing this Agreement the Advertisers withdraw any and all pending and prior sign permit applications they previously submitted to Fulton County for locations which are now within the limits of the City.

3.

Advertisers further agree to the following:

(a) Advertisers waive all attorneys' fees, expenses and damages claims against the City relating to any and all issues and claims presented in the Lawsuit; and

(b) Advertisers agree that no sign built pursuant to this Agreement will be utilized to post messages advertising (1) adult entertainment establishments, strip clubs, massage parlors (except those allowed by local ordinance), adult video or book stores, or similar businesses; (2) abortion services; (3) any activity or product that is illegal under Georgia or federal law; (4) any material which is obscene as such term is defined in O.C.G.A. § 16-20-80; (5) pawn shops; (6) hookah bars; (7) payday loan businesses; and (8) advertising that promotes terrorist activities or groups.

(c) Advertisers agree that they will permit the City to utilize one LED flip or one segment of an LED sign erected pursuant to this Agreement for public service announcements, community events and other messages of vital interest to the public for a period of seven (7) consecutive days no more than eight (8) times per year, provided the City provides advance notice to the Advertisers at least 45 days in advance of such desired usage. No more than five (5) of the signs erected

pursuant to this Agreement may be used for such messages at any one point in time. Every effort will be made by the Advertisers to allow such messages to be displayed in a variety of locations so as to provide information to the public from the broadest possible base. No charge beyond actual expenses shall be required of the City for such usage, and the City shall endeavor to provide camera ready copy meeting the Advertiser's standards for each proposed use.

4.

The City will allow the permanent construction, maintenance, erection, repair, rebuild or replacement of the following signs in addition to on-premise business identification signage on such parcels on the following conditions:

(a) The Advertisers shall have the right to construct, erect, maintain, repair, rebuild or replace nine (9) new permanent back-to-back or "V" shaped electronic LED (or future technology having same effect) multi-message sign structures and one (1) new permanent back-to-back or "V" shaped static-face sign structure within the City. Each sign face may be up to 14 feet by 48 feet in size, except for those indicated on Exhibit "A" are to be limited to 10'6" by 36 feet in size. The Advertisers shall select from the parcels identified among the eight (8) nodes shown on Exhibit "A" attached hereto in determining where to erect these ten (10) sign structures; provided however, for each of the eight (8) nodes, the maximum number of structures per node shall be as indicated on Exhibit "A." Notwithstanding the Advertisers' selection of location, only ten (10) sign structures (9 LED and 1 static) may be constructed. With respect to Node 4, Location No. 1 (5805/5805(A-X) State Bridge Road), if a structure is to be

located there, Advertisers agree to use best efforts to obtain the landowner's consent to locate the structure on the easternmost portion of the tract, but the location shall not be foreclosed from use if the landowner requires placement elsewhere. Advertisers agree to use best efforts to obtain the consent of the landowners (and any necessary amendments to applicable covenants) in Node 8 (Technology Park) and upon obtaining such approvals to construct up to two sign structures in Node 8. If Advertisers determine these consents cannot be obtained, then they shall inform the City and the City may indicate its preference for alternative locations either on Exhibit "A" or located on other sites selected by the City in its sole discretion, but the final decision as to the alternative location(s) shall be selected by Advertisers, either from Exhibit "A" or from alternative locations identified by the City as described above, after considering the City's input. In the event Advertisers are unsuccessful in securing a GDOT permit or entering into an agreement with the property owner of the first location(s) in each node as indicated on Exhibit "A," Advertisers may pursue the other locations shown in each node in the order they are listed.

(b) There is no time limit on the date by which these signs must be constructed in order to be in compliance with this Agreement; provided, however, upon the issuance of all permits required for a particular sign, those permits shall expire one year after issuance of the last permit issued, subject to the permittee's right to receive one six-month extension if the extension is requested in writing prior to the expiration of the one-year term. Each new sign support pole shall be set back at least ten feet from the right of way and no part of the sign structure shall extend across the right-of-way.

This is the only setback requirement applicable. Those signs regarding which Exhibit "A" indicates will include brick or stone clad base will be constructed substantially in accordance with the artist renderings on Exhibit "C." Brick or stone clad bases shall be required only where the base of the pole is visible to the travelling public. In the event a sign is constructed as a "V" shaped sign as that term is commonly understood in the outdoor advertising industry, the angle of the "V" shall not exceed forty-five degrees. The height of each sign may be no more than the maximum height as indicated on Exhibit "A" on a node-by-node and location-by-location basis. The Advertisers will endeavor to build the signs as low as practicable to allow them to be visible to motorists given existing and anticipated vegetation and structures, but this determination shall be made in the Advertisers' sole discretion. As part of their endeavor to build the signs as low as practicable, the Advertisers agree to exercise reasonable diligence to secure permission of all necessary persons to remove trees and vegetation which would obscure visibility and to remove said trees and vegetation. The City agrees to cooperate (without the requirement of permits) in allowing the signs to be visible to motorists at lower heights by removing and maintaining trees and vegetation on City rights-of-way (at Advertisers' expense) and approving the removal of trees and vegetation on private property (with the owner's consent) that would affect visibility. The LED component of each such sign shall be operated in accordance with the terms and conditions of this Agreement; provided, however, nothing herein shall require these signs to be constructed as LED electronic multi-message signs; at the election of Advertisers any sign face may be constructed and/or

later refaced as a trivision, LED or static sign face. The Advertisers shall be entitled to divide their rights under this subparagraph among themselves as they see fit.

(c) The LED component of each of the aforesaid signs shall be operated consistent with the applicable requirements of the Control of Outdoor Advertising Act, O.C.G.A.

§ 32-6-72, et seq. and any applicable regulations promulgated by the Georgia Department of Transportation; provided, however, in the event of any conflict between applicable state laws and regulations and the provisions of this Agreement, the more restrictive provisions shall control. There shall be no motion, flashing or animation on each sign other than the change of the message. There shall be no sound, video streaming, or holographic or digital 3-D images allowed which would be extremely detrimental to public safety. Notwithstanding the present or future provisions of city ordinances with respect to brightness, LED signs allowed hereby shall be in compliance as long as they operate at a brightness level of no more than 0.30 foot candles (under measurement conditions) above ambient light levels as measured at a distance of 250 feet. Except as provided herein, nothing in this paragraph will prohibit the use of visual or sign technology developed in the future which is similar to the LED signage allowed hereby.

(d) To the extent that Advertisers are required to obtain permits from the Georgia Department of Transportation (GDOT) for the construction and alteration of these signs, the City agrees to execute and deliver to Advertisers the GDOT standard application forms for outdoor advertising structures and electronic multi-message structures within ten business days of the City's receipt thereof from Advertisers,

accompanying each form with a statement that "the posting of the outdoor advertising sign as proposed is permitted pursuant to the terms of a legally binding settlement agreement between the City of Johns Creek and the applicant" or containing similar language if requested by GDOT.

(e) This Agreement provides non-expiring authorization for the construction, modification, replacement and rebuilding activities described herein and the City will issue sign, electrical and any other necessary permits, at no cost to Advertisers, for the signs contemplated in this Agreement. While the Advertisers will tender a sign permit or building permit application (one application per sign) prior to erection of each sign, the City agrees to process and issue same within ten business days of receipt. If the City fails to comply with this requirement within the aforesaid ten business days, upon delivery of written notice of default by Advertisers to City and the City's failure to comply within five business days thereof, the permits applied for shall be deemed issued. In connection with the review of such applications, the City agrees that any ordinance of the City conflicting with this Agreement has no application. Specifically, the Advertisers shall have no obligation to comply with Section 8 of Article XXXIII (Signs) of the Johns Creek City Code when tendering a sign permit application, but instead will submit an application providing only the information required on Exhibit "B." Advertisers shall construct the signs allowed hereby in accordance with the requirements of the 2006 International Building Code, with Georgia amendments, as prescribed in the May 27, 2010 ruling entered in the Lawsuit referenced above.



(f) Following the construction of the signs allowed hereby, Advertisers shall provide the City a certificate from a licensed structural engineer certifying the safety of the sign and sign structure. Footing inspections may be performed by a licensed engineer in lieu of a city inspector.

(g) The rights granted hereunder are for the sole benefit of Advertisers and their successors and assigns and no rights shall inure hereunder to the landowners on which the signs described herein shall exist unless any of the parties are presently or shall become the landowners (or easement owners) of the tracts on which the signs shall be erected.

(h) The rights granted hereunder shall in no way impede or restrict the existing signage on the properties on which new signage is allowed hereby, as the intent of this Settlement Agreement is that the signs allowed hereunder are not to replace or limit the existing on-premise signage.

## 5.

The terms and conditions of this Agreement are contingent upon (i) the City executing and delivering the GDOT application form pursuant to paragraph 4(d) above so that the Advertisers may receive all of the permits required by the Georgia Department of Transportation, if applicable, to allow the modification, construction and operation of the signs described in paragraph 4 above, and (ii) this Agreement remaining in full force and effect. In the event the GDOT permits cannot be obtained due to the City's failure to execute and deliver the said GDOT application form or this Agreement is declared invalid by a final, non-appealable order of a court having subject matter jurisdiction, the

rights of the Advertisers under the orders entered in the Lawsuit shall be reinstated. The City warrants that it has not issued and will not issue any outdoor advertising sign permits which would result in the Advertisers being unable to obtain a sign permit from the GDOT because of the spacing between an Advertisers' sign and any other outdoor sign allowed by the City. The spacing is 5,000 feet from another multi-message or LED sign and 100 feet for a static sign.

6.

All Parties agree to present a consent order to Fulton Superior Court requesting that the Court adopt this Agreement as the final order in the Lawsuit resolving all claims raised against the City, all signage locations within the City, and any claims by the City against the Advertisers with respect to the signs sought by the Advertisers in the Lawsuit.

7.

This Agreement sets forth all, and is intended to be an integration of all, of the covenants, promises, agreements, warranties and representations among the Parties hereto, and, other than as expressly set forth herein, there are no covenants, promises, agreements, warranties, representations or other understandings, oral or written, express or implied, among the Parties relating to any and all disputes that exist or might exist between the Parties. This Agreement constitutes the entire Agreement between them. This Agreement may only be amended by a written instrument executed by all parties.

8.

This Agreement represents the compromise of doubtful claims and is not an admission of liability by any Party.

9.

This instrument may be executed in separate counterparts and shall become effective when such separate counterparts have been exchanged among the Parties.

10.

No presumption against or in favor of any Party or person shall apply due the drafting of this documents.

11.

This Agreement shall be governed by the substantive and procedural laws of the State of Georgia. Any suit brought to enforce any provisions of this Agreement must be brought in the courts of Fulton County, Georgia.

12.

Each of the Parties hereby warrants to the other Parties that the undersigned have the authority to execute this Agreement and to bind the respective Parties to this Agreement.

13.

Advertisers may assign their rights hereunder.

14.

The rights of Advertisers established herein are vested property rights and are not affected by existing conflicting laws or ordinances or laws or ordinances enacted after the date hereof.

The undersigned have hereunto set their hands and seals as of the date set forth above.

ACTION OUTDOOR ADVERTISING JV, LLC

By: 

JOHN A. HARTKAMP, JR.

Title:

member

KH OUTDOOR, LLC

By: 

David H. Funk

Title:

Attorney

GRANITE STATE OUTDOOR ADVERTISING,  
INC.

By: 

James A. Waid Jr.

Title:

V.P.

(CORPORATE SEAL)

CITY OF JOHNS CREEK, GEORGIA

By:   
Mayor

Attest:   
City Clerk

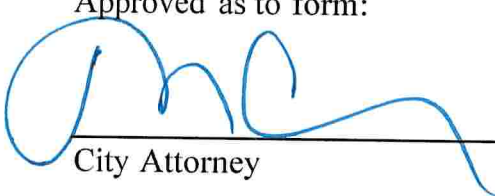
Approved as to form:  
  
City Attorney



EXHIBIT "A"

10/16/141

JOHNS CREEK LOCATION POOL

TOTAL MAXIMUM# OF LOCATIONS ALLOWED  
NINE (9) LED'S & ONE (1) STATIC

\*\*\*\* OH = OVERALL HEIGHT OF SIGN \*\*\*\*

**NODE# 1 -HOLCOMB BRIDGE RD.@ BARNWELL/NESBITT FERRY**

1. 8455 HOLCOMB BRIDGE RD. -HINTON'S WINE- 65'0H
2. 8465 HOLCOMB BRIDGE RD.-RIVERMONT STATION-65'0H  
(INCLUDES BRICK OR STONE CLAD BASE)
3. 8485 HOLCOMB BRIDGE RD.-DISCOUNT TIRE-65'0H  
(INCLUDES BRICK OR STONE CLAD BASE)

(CAN BUILD TWO (2) 14' X 48' LOCATIONS, BUT ONLY ONE (1) LED AND ONE (1) STATIC)

**NODE# 2 -W/S STATE BRIDGE RD.FROM KIMBALL BRIDGE TO MORTON**

- 1.11195 STATE BRIDGE RD.-GODDARD'S SCHOOL-85'0H  
(INCLUDES BRICK OR STONE CLAD BASE)
2. 11180 STATE BRIDGE RD.-NORTHSIDE URGENT CARE-95'0H  
(INCLUDES BRICK OR STONE CLAD BASE)
3. 10870 STATE BRIDGE RD.-GOOSE ISLAND EMISSION CENTER-65'0H  
(INCLUDES BRICK OR STONE CLAD BASE)
4. 10700 STATE BRIDGE RD. -PENN HODGE CENTER STATION -70'0H  
(INCLUDES BRICK OR STONE CLAD BASE)

(CAN BUILD TWO (2) 14' X 48' LOCATIONS, LEDS OR STATICS)

**NODE# 3-E/S STATE BRIDGE RD.FROM KIMBALL BRIDGE TO MORTON**

1. 10645 STATE BRIDGE RD.-SAM'S MART SHELL STATION -70'0H  
(INCLUDES BRICK OR STONE CLAD BASE)

(CAN BUILD A 10'6" X 36' LED OR A STATIC LOCATION)



EXHIBIT "A"

10/16/141

---

NODE# 4- N/S STATE BRIDGE RD. NEAR MEDLOCK BRIDGE RD.

1. 5805/5805(A-X) STATE BRIDGE RD.-MEDLOCK CORNERS -70'0H  
(INCLUDES BRICK OR STONE CLAD BASE)
2. 5980 STATE BRIDGE RD. -DUNKIN DONUTS- 75'0H  
(INCLUDES BRICK OR STONE CLAD BASE)
3. 5970 STATE BRIDGE RD.- VACANT SITE EAST OF DUNKIN DONUTS-  
75'0H  
(INCLUDES BRICK OR STONE CLAD BASE)
4. 5725 STATE BRIDGE RD.- UPSCALE/RESALE CENTER-75'0H  
(INCLUDES BRICK OR STONE CLAD BASE)
5. 5710 STATE BRIDGE RD.- THE PUB HOUSE-65'0H  
(INCLUDES BRICK OR STONE CLAD BASE)

(CAN BUILD TWO (2) 14' X 48' LOCATIONS LED OR STATIC)

NODE# 5- MEDLOCK BRIDGE RD.@ STATE BRIDGE RD.

1. 9730 MEDLOCK BRIDGE RD.-FAIRWAY PLAZA-80'0H
2. 9720 MEDLOCK BRIDGE RD.- BP STATION- 80'0H

(CAN BUILD ONE (1) 14' X 48' LOCATION- LED OR STATIC)

NODE# 6- W/S MEDLOCK BRIDGE RD. @ ABBOTTS BRIDGE RD.

1. 10900 MEDLOCK BRIDGE RD.-MEDLOCK PROMENADE- 65'0H  
(INCLUDES BRICK OR STONE CLSD BASE)
2. 10960 MEDLOCK BRIDGE RD.- GODWIN'S BMW REPAIR-65'0H
3. 10845 MEDLOCK BRIDGE RD.- LONGHORNS -75'0H
4. 10945 MEDLOCK BRIDGE RD.-VALERO STATION-70'0H  
(INCLUDES BRICK OR STONE CLAD BASE)
5. 10965 MEDLOCK BRIDGE RD. -BP STATION -70'0H  
(INCLUDES BRISK OR STONE CLAD BASE)

(CAN BUILD TWO (2) 14' X 48' LOCATION-LED OR STATIC)

NODE # 7- JONES BRIDGE ROAD @ ABBOTTS BRIDGE ROAD

1. 11640 JONES BRIDGE RD- SMARTSTOP SELF- STORAGE-65' OH- 14' X 48'

- (INCLUDES BRICK OR STONE CLAD BASE)
2. 11701 FOX RD. TAEKWONDO CENTER-60'OH-14' X 48'  
(INCLUDES BRICK OR STONE CLAD BASE)
  3. 11670 JONES BRIDGE-EXXON STATION-60'OH -10'6' X 36'  
(INCLUDES BRICK OR STONE CLAD BASE)

(CAN BUILD ONLY ONE (1) LOCATION-LED OR STATIC)

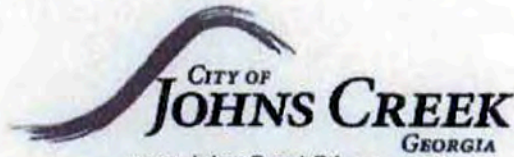
**NODE #8-MCGINNIS FERRY ROAD**

1. 11450 MCGINNIS FERRY ROAD - VACANT PARCEL IN TECH PARK  
OWNED BY JC FLEX, LLC – 70' OH (Need Tech Park Approval)  
(INCLUDES BRICK OR STONE CLAD BASE)
2. 6375 MCGINNIS FERRY ROAD-TERRACES OF JOHNS CREEK-70' OH  
(INCLUDES BRICK OR STONE CLAD BASE) (Need Tech Park Approval)
3. 6650 MCGINNIS FERRY ROAD-VACANT OWNED BY TPA -70' OH  
(INCLUDES BRICK OR STONE CLAD BASE) (Need Tech Park Approval)
4. 7701 MCGINNIS FERRY RD.- VACANT-PINE STRAW LOT- 65'OH

(CAN BUILD UP TO THREE (3) LOCATIONS -LEDs OR STATICS)



# EXHIBIT "B"



www.JohnsCreekGA.gov  
678-512-3200 ~ (fax) 678-512-3303  
12000 Findley Road, Suite 400, Johns Creek, GA 30097

## WALL & GROUND SIGN PERMIT APPLICATION

### BUSINESS INFORMATION (please print)

For Wall/Awning/Canopy Signs: Johns Creek Occupational Tax Certificate No.: N/A  
(Must provide number to submit)

Site Address of Proposed Sign \_\_\_\_\_ Suite \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Business/Division Name

APPLICANT

Business Owner / Manager

Phone \_\_\_\_\_

### PROPERTY OWNER INFORMATION (please print)

Owner: \_\_\_\_\_ Owner Agent Signature: \_\_\_\_\_

Property Owner Address: \_\_\_\_\_

Phone: N/A Fax: N/A E-mail: N/A

### CONTRACTOR INFORMATION (Please provide copy of Occupational Tax Certificate)

Contractor: \_\_\_\_\_ Contractor License No. \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_

Will contractor install sign? ☐ Yes ☐ No

### SIGN INFORMATION

Zoning District: \_\_\_\_\_ Zoning Case No.: N/A Parcel Identification No.: \_\_\_\_\_

	Sign Type	Sign Dimension & Area	Height Above Grade	Ground Sign setback from R.O.W.	Color & Material	Sign Value
Proposed Signage	<input type="checkbox"/> Freestanding Sign <input type="checkbox"/> Construction Sign <input type="checkbox"/> Awning Sign <input type="checkbox"/> Canopy Sign <input type="checkbox"/> Wall Sign <input type="checkbox"/> Internal Sign <input type="checkbox"/> Directory Sign <input type="checkbox"/> Other _____	(W) _____ x (H) _____ Area: _____				\$ _____
* Existing Signage	<input type="checkbox"/> Freestanding Sign <input type="checkbox"/> Construction Sign <input type="checkbox"/> Awning Sign <input type="checkbox"/> Canopy Sign <input type="checkbox"/> Wall Sign <input type="checkbox"/> Internal Sign <input type="checkbox"/> Directory Sign <input type="checkbox"/> Other _____	(W) _____ x (H) _____ Area: <u>N/A</u>				\$ _____

Are there any EXISTING sign(s) located on the building or property? ☐ No ☐ Yes. If yes, please explain what will happen to the existing sign(s): N/A

\*If EXISTING sign(s) are to be removed, please complete and submit with the application the "Existing Signage Removal Affidavit."

**APPLICANT SIGNATURE:**

~~I hereby certify that there are no existing signs except those indicated on this application or that any sign(s) required for removal will be removed before any new sign(s) are installed. I hereby certify that all information provided herein is true and correct and I acknowledge compliance with all requirements of the zoning district. I am aware of Article XXXIII, Signs, and agree to comply with the City of Johns Creek Zoning Ordinance.~~

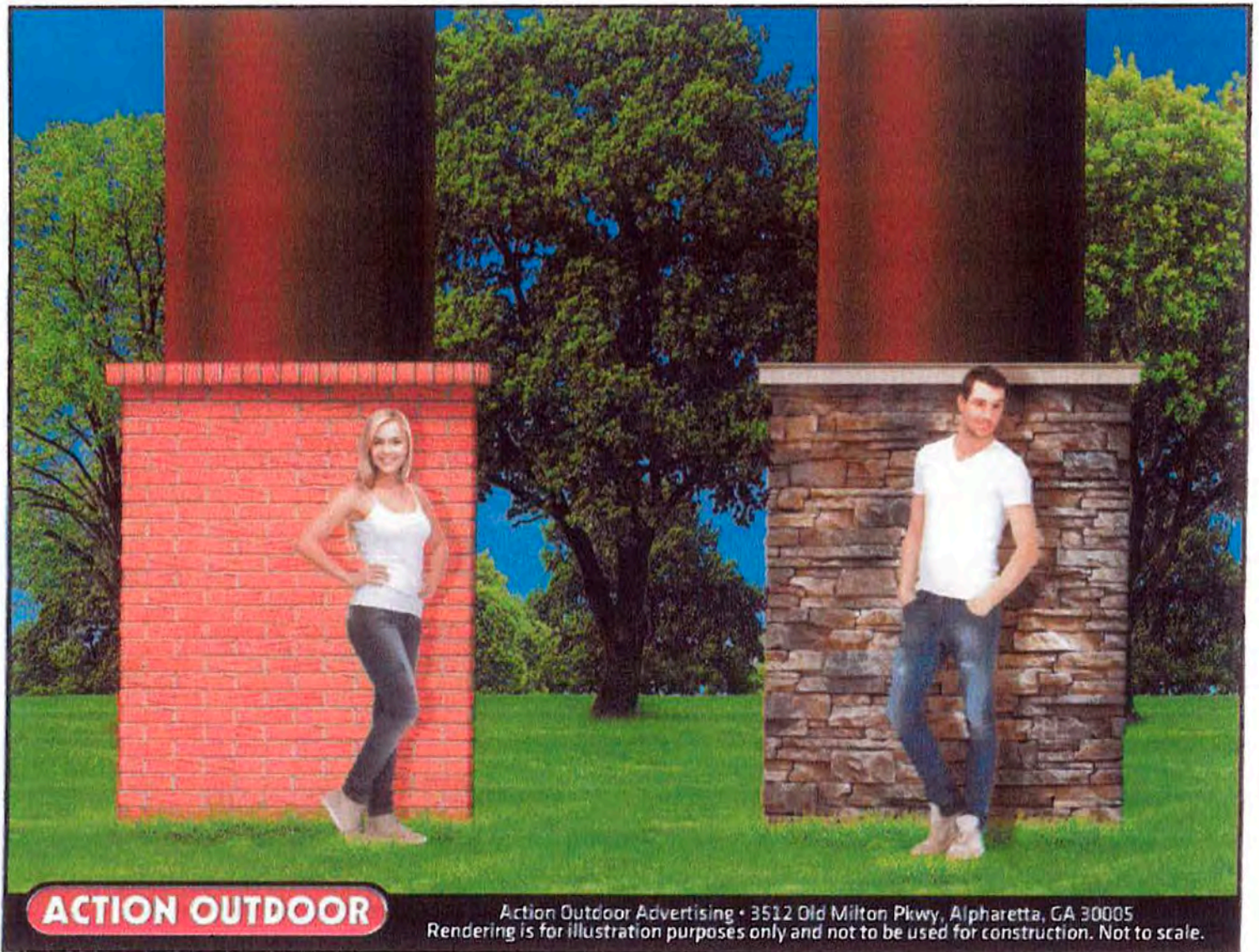
Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Applicant Signature: ~~Business Owner or Owner's Representative~~

STAFF ONLY		
Approved By:	Denied By:	Date:
Permit No.:	Zone District:	Case No. TOTAL FEE: \$
A Non-Refundable Administrative Fee of \$25.00 is Applied to all Sign Permits		
Signs (valuation per square foot)	Permit Fee Based on Valuation (Total Valuation)	FEE
Wall mounted - \$50	\$1 to \$500	\$23.50
Free-standing - \$100	\$501 to \$2,000	\$23.50 for the first \$500 plus \$1.50 for each additional \$100, or fraction thereof, to and including \$2,000
	\$2,001 to \$25,000	\$69.25 for the first \$2,000 plus \$1.4 for each additional \$1,000, or fraction thereof, to and including \$25,000



# EXHIBIT "C"



**ACTION OUTDOOR**

Action Outdoor Advertising • 3512 Old Milton Pkwy, Alpharetta, GA 30005  
Rendering is for illustration purposes only and not to be used for construction. Not to scale.